

# Exhibit 3

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A LAW CORPORATION

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November 4, 2005

**CONFIDENTIAL SETTLEMENT COMMUNICATION SUBJECT**  
**TO RULE 408 FED. R. EVID.**

Lex R. Smith, Esq.  
Kobayashi Sugita & Goda  
First Hawaiian Center  
999 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813

**VIA FAX NO. 539-8799**

**Re: C&S Wholesale Grocers, Inc.**  
**Wayne Berry v. Hawaiian Express Service, Inc., et al.,**  
**Civil No. CV03-0035 SOM-LEK**

Dear Mr. Smith:

I am writing with regard to the upcoming trial. I agree with you that C&S has prevailed on the issue of using the spreadsheets. We are confident that upon the conclusion of this case, C&S will commence infringement of Mr. Berry's works. We therefore, believe that the right to use the spreadsheets is a pyrrhic victory at best. Because Mr. Berry has once again prevailed on ownership and copyrightability of his database, C&S will be at risk for additional infringement claims if it uses any database that can't be traced to a source other than Berry or Dillon.

First, Mr. Berry will agree not to appeal the summary judgment and C&S will be allowed to continue to use the spreadsheet without threat of continued litigation. In exchange C&S must agree to return all copies of Mr. Berry's works and provide cooperation regarding identifying the disposition of all copies of Mr. Berry's works that are no longer in the C&S' possession. Additionally, C&S must agree to an injunction against the possession and/or use of any other Berry software or derivatives of any kind. It must agree not to attempt to reverse, engineer or otherwise infringe his copyrights and works. Because C&S owns no copy, any previously reverse engineered works would have to be disposed of or accounted for, other than the spreadsheets. That would conclude the matter between Mr. Berry and C&S.

This offer will remain open for seven (7) days from this date and then will be withdrawn without further notice. The offer is subject to agreement regarding final documentation. Each party would otherwise bear their own fees and costs.

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If there is any desire to explore this offer, then a request to extend it must be made in writing prior to its termination. Mr. Berry reserves the right to modify his settlement demand in response to any counter offers. Any attempt to use this offer as pretext to continue the trial date will automatically terminate the offer.

Very truly yours,

LYNCH ICHIDA THOMPSON KIM & HIROTA



Timothy J. Hogan

TJH:llk

cc: Wayne Berry